



WISCONSIN LEGISLATIVE COUNCIL

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CLEARINGHOUSE RULE 01-146

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 26.145, Stats., is cited as statutory authority and relates to the proposed amendments to s. NR 47.903. However, s. 26.145 (2) (b), Stats., states: “The department *may not award* a grant under this section *unless* the recipient of the grant enters into a written agreement with the department under which the recipient agrees to assist the department in the suppression of forest fires at the department’s request.” [Emphasis added.] Proposed s. NR 47.903 (6) allows a grant applicant to conduct project work and incur costs before signing such a grant agreement, and therefore appears to be in conflict with s. 26.145 (2) (b), Stats. Moreover, the next-to-last sentence of the first paragraph of the analysis states: “The Department’s approval is sufficient to authorize the municipality or fire department’s action.” That statement appears to be in conflict with s. 26.145 (2) (b), Stats.

2. Form, Style and Placement in Administrative Code

a. In s. NR 47.75 (2), “sustainable forest management grant” should be changed to “sustainable forestry grant” to stay consistent with the definition in s. 28.11 (5r), Stats. This would also be consistent with proposed s. NR 47.75 (4).

b. Section NR 47.75 (3) (f) can simply state: ““Sustainable forestry” has the meaning given in s. 28.04 (1) (e), Stats.””

c. The parenthetical abbreviations should be deleted from s. NR 47.75 (4) (a) 3. and 10.

d. In s. NR 47.75 (4) (a) (intro.), “any of the following” should be inserted before the colon. In sub. (6) (b) (intro.), “any of the following occur” should be inserted before the colon. Section NR 47.75 (7) (a) (intro.) is incorrectly drafted as introductory material; “, as follows:” should replace the final period.

e. In s. NR 47.75 (7) (c), “shall” should replace “will.”

3. Conflict With or Duplication of Existing Rules

In s. NR 47.75, note that section titles are written with an initial capital letter and in bold print. [See s. 1.05 (2) (b), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section NR 47.75 (3) (c) defines “County forest time standards” as referring to “the agreement between the department and a county that quantifies ***the amount of technical forestry assistance*** the department provides to the county to fulfill ch. 28, Stats., responsibilities.” [Emphasis added.] Which “ch. 28, Stats., responsibilities” does this provision refer to? Those described in the plans required under s. 28.11 (5), Stats.? A more precise citation than “ch. 28, Stats., responsibilities” would be useful. Also, is it appropriate that “the agreement . . . that quantifies the amount of technical forestry assistance the department provides” should quantify in terms of time rather than dollars?

b. In s. NR 47.75 (4) (b), a more precise statutory citation would be useful--presumably here it would be to s. 28.11 (5) (a), Stats.

c. In s. NR 47.75 (9) (b), “state aid forestry account” should be changed to “forestry fund account” to be consistent with s. 28.11 (8) (b) 3., Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the last sentence of the analysis, “this grant” should be changed to “sustainable forestry grants.”

b. The analysis would be clearer if the two paragraphs were reversed, since it would then follow the order of both the introductory clause and the body of the order.

c. In s. NR 47.75 (3) (a), should “management on the county forest” be changed to “management of the county forest”?

d. Section NR 47.75 (4) (c) requires projects eligible for sustainable forestry grants to be “suitable as a short term and unanticipated workload item as identified in the annual adjustment category of the county forest time standards.” The definition for “county forest time standards” is created in s. NR 47.75 (3) (c), which does not include a definition for “annual adjustment category.” It is difficult to understand what this provision means.

e. Section NR 47.75 (5) (b) states that grants “*may not* be used to fund work required by the department as part of its obligation under the county forest time standards.” [Emphasis added.] But s. NR 47.75 (4) (c) *requires* that projects eligible for the grants be suitable as a short term and unanticipated workload item in the “county forest time standards” agreement. “County forest time standards” are defined in s. NR 47.75 (3) (c) as an agreement that quantifies assistance the department provides the county to fulfill its statutory responsibilities. Therefore, s. NR 47.75 (5) (b) and s. NR 47.75 (4) (c) appear to be in conflict.

f. In s. NR 47.75 (6) (a), second sentence, “shall include, but is not limited to, and shall be filed as follows:” should be changed to “shall include, but is not limited to, all of the following:”. Subdivisions 1., 2. and 4. should follow. Subdivisions 3. and 5. should either be drafted as separate paragraphs or included in par. (a) (intro.).

g. There should be a period at the end of s. NR 47.75 (6) (b) 3.

h. In s. NR 47.75 (6) (a) 4. and (b) 3., (7) (d) and (g) and (9) (d), numerals should replace the spelled-out numbers. [See s. 1.01 (5), Manual.]

i. In s. NR 47.903 (3), consideration should be given to deleting all of the material before the colon. In the alternative, the date could be updated. Will the change in that provision first apply to applications submitted in 2002 or in 2003?